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7 THE WAVE STUDIO, LLC

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10
11 THE WAVE STUDIO, LLC, a New York
Limited Liability Corporation,

12 Plaintiff,

13 v.

14 MASTERCARD INTERNATIONAL, INC.,
15 a Delaware corporation,

16 Defendant.
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Case No. 4:14-cv-01342

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT**

JURY TRIAL DEMANDED

1 The Wave Studio, LLC (“Plaintiff”), by its attorneys, Cobalt LLP, for its complaint
2 against MasterCard International, Incorporated (“MasterCard” or “Defendant”) alleges as
3 follows:
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5 NATURE OF THIS ACTION

6 1. Plaintiff is the copyright owner of photographic works created by one of its members,
7 Junior Lee. Ms. Lee is a Malaysian photographer who uses her pictures to create distinctive
8 marketing and promotional materials for prominent hotels and renowned travel organizations
9 worldwide. This is an action for copyright infringement arising out of Defendant’s unauthorized
10 reproduction, display, distribution, publication and utilization of several of Plaintiff’s
11 photographs in connection with Defendant’s promotion and sale of hotel and travel bookings on a
12 website accessed across the United States.
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14 2. Ms. Lee is commissioned either by hotel management and promotional agencies, or by
15 hotel and travel locations directly, to photograph elite hotel properties and destination locales and
16 to create marketing and promotional materials featuring her photographs. However, per the
17 express terms of her contract with such agencies, Plaintiff retains sole and exclusive ownership of
18 all right, title and interest in and to the underlying photos, as well as the sole and exclusive right
19 to license, distribute and use the photographs for any and all other purposes.
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21 3. As set forth in more detail below, Defendant has committed blatant acts of copyright
22 infringement by improperly using Plaintiff’s photographs—without authorization—for its own
23 financial gain, including but not limited to, using Plaintiff’s photographs in its own articles, photo
24 galleries, and promotional materials, all of which are generating traffic to and revenue for
25 Defendant and its business. By virtue of this action, Plaintiff should be awarded the appropriate
26 injunctive relief and monetary damages to remedy and redress Defendant’s rampant, willful and
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1 continued misuse of Plaintiff's copyrighted photographs.

2 **JURISDICTION AND VENUE**

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4 4. This complaint alleges a cause of action under the Copyright Laws of the United States,
5 Title 17 of the United States Code.

6 5. This Court has subject matter jurisdiction over this claim pursuant to 28 U.S.C. §§ 1331
7 and 1338 because Plaintiff's claim against Defendant arises under Title 17 of the United States
8 Code.

9 6. This Court has personal jurisdiction over the Defendant because Defendant has done and
10 continues to do business in this district. Defendant also maintains a place of business in this
11 district, located at 2999 Oak Road, Suite 1020, Walnut Creek, California 94597.

12
13 7. Pursuant to 28 U.S.C. § 1391, venue properly lies in this Court because a substantial part
14 of the events giving rise to the claim occurred in this judicial district.

15 **THE PARTIES**

16 8. Plaintiff, The Wave Studio, LLC, is a limited liability company organized under the laws
17 of the State of New York, with its principal place of business at One Barker Avenue, #542, White
18 Plains, New York 10601. Plaintiff is a business entity operated by photographer Junior Lee, a
19 Malaysian citizen currently domiciled in Singapore. Ms. Lee creates marketing materials for
20 businesses worldwide using her original works, but retains ownership of all rights, title, and
21 interest in and to all artistic works used therein. The Wave Studio, LLC was formed to hold,
22 manage, and control the U.S. intellectual property rights to said works, including, but not limited
23 to, several U.S. copyright registrations.

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25 9. Upon information and belief, Defendant MasterCard International, Inc. is a Delaware
26 corporation with its principal place of business at 2000 Purchase Street, Purchase, New York
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1 10577. Upon information and belief, Defendant MasterCard International, Inc. registers and uses
2 the domain name <www.mastercard.com>. Upon information and belief, Defendant MasterCard
3 International, Inc. regularly transacts or solicits business in the State of New York through, inter
4 alia, a website resolving to <www.mastercard.com>.

5 **FACTUAL BACKGROUND**

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7 10. Over the years, Junior Lee has established a widely successful business in travel and hotel
8 photography worldwide. She has photographed The Setai Miami (USA), The Heritage House
9 Mendocino (USA), The Chedi Milan (Italy), The Leela Goa (India), The Chedi Muscat (Oman),
10 The Nam Hai Hoi An (Vietnam), The Chedi Chiang Mai (Thailand), The Chedi Phuket
11 (Thailand), The Datalang Langkawi (Malaysia), The Andaman Langkawi (Malaysia), The Saujana
12 Kuala Lumpur (Malaysia), The Club at The Saujana Kuala Lumpur (Malaysia), Carcosa Seri
13 Negara Kuala Lumpur (Malaysia), The Legian Seminyak (Bali), The Club at The Legian
14 Seminyak (Bali), The Chedi Club Ubud (Bali), The Serai Club Jimbaran (Bali), The Lalu Sun
15 Moon Lake (Taiwan), Langsuan Apartment Bangkok (Thailand), Seah St. Apartment
16 (Singapore), GHM Boutique Products (Singapore), The Fullerton Hotel (Singapore), Raffles
17 Hotel (Singapore), La Pari-Pari Hotel Langkawi (Malaysia), and Four Seasons Great Exuma
18 (Bahamas). Her photographs are highly sought after works of art that businesses worldwide
19 routinely display in the course of promoting their facilities, custom, and trade. Specifically, her
20 photographs of The Setai Miami, The Chedi Muscat, The Nam Hai Hoi An and The Datalang
21 Langkawi (the "Hotel Photographs") are at issue in this matter.

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24 11. The nature of Ms. Lee's photography business is promotional in nature. Generally, Ms.
25 Lee is commissioned by her clientele to photograph certain items, personnel, sites, or facilities,
26 modify the images as necessary, and deliver the final product to her clientele for approval. Ms.
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1 Lee is usually compensated via the client's purchase of marketing materials that incorporate her
 2 photographs. In other words, the client purchases the marketing materials designed and
 3 manufactured by Ms. Lee, inclusive of a license to distribute the marketing materials created by
 4 Ms. Lee. The client does not purchase the underlying photographs.

5
 6 12. Ms. Lee specifically reserves all rights to her works that are not otherwise purchased by
 7 her client. One of the rights she reserves is the ownership of the photographs, including the
 8 copyright in and to the same.

9 13. Ms. Lee, through various business entities (including, but not limited to, Wave-s, The
 10 Wave Pte. Ltd. and The Wave Design Pte. Ltd.) obtained copyright registrations from the United
 11 States Copyright Office for the Hotel Photographs (collectively and individually, "Copyrighted
 12 Works"). True and correct copies of registration certificates for the Copyrighted
 13 Works are attached hereto as **Exhibit 1**.

15 Registration Number	Title of Work
16 VA 1-432-326	The Wave Design Pte. Ltd. Photographs 2007 (A)
17 VA 1-432-328	Wave-s Photographs 2003
18 VA 1-432-331	The Wave Pte. Ltd. Photographs 2005 (A)

19 14. On November 11, 2011, the authors of the Copyrighted Works, by and through Ms. Lee,
 20 assigned all right, title and interest in and to the Copyrighted Works to Plaintiff.

21 15. Plaintiff has never assigned or otherwise transferred any interest in and to the Copyrighted
 22 Works to Defendant or otherwise dedicated them to the public.

23 16. Defendant did not seek, nor has it ever sought, Plaintiff or Junior Lee's permission to
 24 utilize the Hotel Photographs.

25 17. Despite having no permission, consent, or license to do so from Plaintiff, Defendant has
 26 used and continues to use the Hotel Photographs and has not compensated Plaintiff for such use.
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1 18. Upon information and belief, the Hotel Photographs that are the subject of the
2 Copyrighted Works have been seen and continue to be seen by thousands of users on a daily
3 basis.

4 19. Upon information and belief, Defendant has utilized the Hotel Photographs for purposes
5 of trade, including promoting and advertising the bookings to the boutique and high-end hotels
6 featured in those Works, thus realizing significant revenue.
7

8 **FIRST CLAIM FOR RELIEF**
9 **Copyright Infringement**
10 **(17 U.S.C. § 101 *et seq.*)**

11 20. Plaintiff repeats and realleges and incorporates by reference each and every allegation
12 contained in paragraphs 1 through 19 above.

13 21. Defendant has directly infringed Plaintiff's Hotel Photographs that are the subject of the
14 Copyrighted Works by reproducing, displaying, or distributing unauthorized copies of Plaintiff's
15 photographs in violation of 17 U.S.C. § 501 *et seq.*

16 22. Defendant copied Plaintiff's entire images for its own personal commercial gain.
17 Moreover, Defendant's use of the Hotel Photographs is for the exact same purpose as Plaintiff's
18 intended use: to promote and market hotel properties and destination locations. Thus, there is no
19 added benefit to the public from having Defendant display Plaintiff's Hotel Photographs.

20 23. Specifically, without authorization or consent, Defendant has reproduced, displayed or
21 distributed Plaintiffs Copyrighted Works of Registration Nos. VA 1-432-326; VA 1-432-328; and
22 VA 1-432-331. True and correct copies of Defendant's website demonstrating its unauthorized
23 use of Plaintiff's Copyrighted Works are attached as **Exhibit 2**.
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25 24. Defendant's infringement of Plaintiff's rights in and to each of the Copyrighted Works
26 constitutes a separate and distinct act of infringement.
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1 25. Upon information and belief, Defendant knew or should have known that its acts
2 constituted copyright infringement.

3 26. Defendant's conduct was willful within the meaning of the Copyright Act.

4 27. Plaintiff has been damaged by Defendant's conduct, including, but not limited to
5 economic losses. Plaintiff continues to be damaged by such conduct, and has no adequate remedy
6 at law to compensate the Plaintiff for all the possible damages stemming from the Defendant's
7 conduct.

8 28. Because of the willful nature of the Defendant's conduct, Plaintiff is entitled to an award
9 of statutory damages for each instance of copyright infringement by Defendant, in lieu of
10 recovery of exemplary damages, attorneys' fees, and all associated costs.
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12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff requests that the Court enter judgment against Defendant MasterCard
14 International Inc. as follows:
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16 A. That Defendant has infringed Plaintiff's rights in the Copyrighted Works;

17 B. For entry of preliminary and permanent injunctions providing that Defendant and its
18 officers, agents, servants and those persons in active concert or participation shall be enjoined
19 from directly or indirectly infringing Plaintiff's rights in the Copyrighted Works;
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21 C. For entry of preliminary and permanent injunctions providing that Defendant shall
22 immediately remove all copies of the Copyrighted Works from its websites and/or immediately
23 seek a license from Plaintiff for its use;

24 D. For entry of judgment that Defendant shall pay actual damages and profits, or statutory
25 damages, pursuant to 17 U.S.C. § 504, at the election of Plaintiff;

26 E. For entry of judgment that Defendant shall pay Plaintiff's costs and attorneys' fees incurred
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1 in this action, pursuant to 17 U.S.C. § 505;

2 F. For entry of judgment that Plaintiff be granted such other relief as the Court deems just,
3 equitable and proper.
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6 Dated: March 24, 2014

7 COBALT LLP

8
9 By 

10 Nate A. Garhart
Amanda R. Conley

11 Attorneys for Plaintiff
12 The Wave Studio, LLC
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JURY DEMAND

The Wave Studio, LLC respectfully requests a jury trial on all issues triable thereby.

Dated: March 24, 2014

COBALT LLP

By


Nate A. Garhart
Amanda R. Conley

Attorneys for Plaintiff
The Wave Studio, LLC